

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

DARRYL ASHMORE,

Plaintiff,

vs.

Case No. 9:16-cv-81710-KAM

NFL PLAYER DISABILITY &  
NEUROCOGNITIVE BENEFIT PLAN,

Defendant.

**DEFENDANT’S NOTICE OF ISSUES REMAINING  
FOR THE COURT’S DETERMINATION**

Defendant, the NFL Player Disability & Neurocognitive Benefit Plan (“Plan”), files this Notice of Issues Remaining for The Court’s Determination in response to the separate “notice” that Plaintiff filed on April 24, 2018 (ECF 52).

\* \* \*

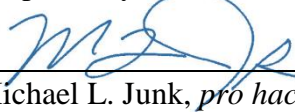
Plaintiff’s April 24 notice was designed to tell the Court that a Plan neutral physician had evaluated him and found him unemployable. The notice was improper because it introduces evidence outside the administrative record, and it was unhelpful because it implies that this litigation is wholly or partially moot when, in fact, it is not.

As the Court knows from the pending briefs, the question in this case is whether the Disability Board correctly or reasonably denied Plaintiff’s **October 2015 application** for disability benefits after he willfully obstructed the Plan’s medical evaluation process and failed to attend several required medical evaluations. That question is still squarely before the Court.

The medical evaluation and subsequent award of benefits mentioned in Plaintiff's notice came after Plaintiff filed a second application for benefits in February 2018, attended a neutral exam and thus complied with the Plan's procedures, and was ultimately found to be totally and permanently disabled. None of that has anything to do with the Disability Board's decision on Plaintiff's first application for benefits in October 2015—where Plaintiff did not comply with Plan procedures—or with this Court's review of that decision. Thus, while Plaintiff correctly points out that a remand may no longer be necessary, this case still presents a real controversy, and is ripe for the Court's decision.

Dated: April 27, 2018

Respectfully submitted,



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**COUNSEL FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 27th day of April, 2018, a true and correct copy of the foregoing NOTICE OF ISSUES REMAINING FOR THE COURT'S DETERMINATION was electronically filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following counsel for Plaintiff:

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Michael L. Junk, *pro hac vice*